UNREPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS' PATENT APPEAL NO. 1191 OF 2007**

% **Date of Decision** : 1st October, 2007.

SUBH RAM (DECEASED) THR. HIS LRS & ANR. ..... Appellants.
Through Mr. Ravinder Sethi, Sr. Advocate with Mr. V.S. Rana, Mr. Sunil Chauhan and Mr. Rajiv Kumar Ghawana, Advocates.

VERSUS

FINANCIAL COMMISSIONER, DELHI AND ORS. ... Respondents.
Through Nemo.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellants-legal heirs of Mr. Subh Ram have challenged judgment dated 11th June, 2007 passed in W.P.(C) No.

5620/1998 dismissing their writ petition questioning the order dated 10th August, 1998 passed by the Tehsildar and the order dated 10th September, 1998 passed by the Financial Commissioner. By the said order application of the appellants for cancellation of mutation on inheritance in respect of 1/9th share in Khata No. 371 in village Tikri Kalan, Tehsil Najafgarh in the names of Mr. Sarvashri Raj Singh, Mr. Vinay Kumar, Mr. Satyawan and Mr. Satpal Singh, all sons of late Ms. Bharto was rejected. The said mutation in the name of sons of late Ms. Bharto was made by the Tehsildar on 11th August, 1995.

2. The appellants herein are legal heirs of Mr. Subh Ram and grandsons of late Mr. Harphool Singh, who expired in 1964. He was a joint bhumidar in land in Khata No. 371 in village Tikri Kalan, Tehsil Najafgarh. After Mr. Harphool Singh's death in 1964 the aforesaid land was mutated in 1966 in the names of his sons, Mr. Subh Ram, Mr. Jai Karan and daughter-Ms. Bharto, who were described as 1/3rd owners of the land with 2/3rd share belonging to other joint bhumidars remaining unchanged. In other words, Mr. Subh Ram, Mr. Jai Karan

and Ms. Bharto became 1/9th owners/joint bhumidars of the aforesaid land after death of Mr. Harphool Singh. The mutation in favour of Ms.Bharto in 1966 remained unchallenged during her life time and on her death on 14th August, 1986 her rights were transferred and inherited by her four sons-Mr. Sarvashri Raj Singh, Mr. Vinay Kumar, Mr. Satyawan and Mr. Satpal Singh. They applied for mutation and the said application was allowed by the Tehsildar by order dated 11th August, 1995.

3. Mutation in favour of sons of Ms. Bharto was challenged by the appellants herein in the year 1998, but rejected by the impugned orders dated 10th August, 1998 and 10th September, 1998 by the Tehsildar and the Financial Commissioner, respectively. Learned counsel for the appellant challenged the impugned orders on the ground that they are contrary to Section 50 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as DLRA, for short) under which inheritance of agricultural land is by male members and that a married daughter is excluded. It was also submitted that mutation by

itself does not decide question of title or create title and that it is only an evidence of title. Learned Counsel for the appellant referred to the following decisions in support of the aforesaid submissions, ***Ram Mehar versus Smt. Dakhan*** reported in 1973 RLR 279(para 21), ***Om Prakash & Anr. versus Mansa & Others.*** reported in 1959 PLJ 125 (para 3), ***Sankalchan Jaychandbhai Patel versus Vithal Bhai Jay Chand Bhai Patel*** reported in 1996 (6) SCC 433 (para 7), ***Ashok Bansal & Ors. versus Gurdas & Anr.*** reported in 2002 (81) PLR 804 (para 9), ***Mahila Bajrangi versus Badribai & Anr.*** reported in 2003 (2) SCC 464 (para 6), ***Balwant N Viswamitra & Ors. versus Yadav Sadashiv Mule*** reported in 2004 (5) AD 172 (para 10 to 15), ***Sushil Kumar Mehta versus Gobind Ram Bohra*** reported in 1990 (1) SCC 193 (para 26), ***Shri Krishna versus The Kurukshetra University*** reported in AIR 1976 SC 376 (para 9), ***Sitaram Motilal Kalal versus Santanuprasad Jaishankar Bhatt & Ors.*** reported in 1966 ACJ 89, ***Kiran Singh & Ors. versus Chaman Paswan & Ors.*** reported in 1955 SCR 117, ***Kanswar Sain versus***

Financial Commissioner W.P. (c) No. 1173 of 1980 (09/12/2004).

The principles of law are well settled and established. The question is applicability of the said principles in and to the facts of the present case.

4. It may be relevant to state here that in 1995 after the death of Ms. Bharto, steps were taken for mutation in favour of Mr. Sarvashri Raj Singh, Mr. Vinay Kumar, Mr. Satyawan and Mr. Satpal Singh who are all sons of Ms. Bharto. Mr. Devender Singh son of Mr.Subh Ram was present before the Tehsildar and he himself identified the four sons. He did not raise any debate nor objected to mutation being granted in favour of the four sons of Ms. Bharto. This aspect was highlighted by the Tehsildar in his order dated 10th August, 1998 and the relevant portion of the earlier order of mutation dated 11th August, 1995 has been reproduced by the learned Single Judge in paragraph 12 of his judgment. By order dated 11th August, 1995 mutation in favour of four sons of Ms. Bharto was made. In paragraph 13 of the judgment, the precise statement made by

Mr.Devender Singh before the Tehsildar in identifying Mr. Satpal Singh son of Ms. Bharto has been reproduced. Subsequently, after the death of Mr. Subh Ram, Mr. Devender Singh was impleaded as one of his legal heirs on an application under Order XXII, Rule 3 of the Code of Civil Procedure, 1908. We, therefore, agree with the findings of the learned Single Judge that Mr. Subh Ram was fully aware of the mutation order of the Tehsildar dated 11th August, 1995 and the contention of the appellants that they were not aware of the said order and the said order was passed behind their back, is not correct. It is apparent from the facts stated above that mutation in favour of Ms. Bharto in 1966 and thereafter in favour of her sons on 11th August, 1995 was done with the knowledge and in fact with the consent of Mr. Subh Ram. Presence of Mr. Devender Singh s/o Mr. Subh Ram and his statement is a clear indicator. Mr. Devender Singh has not filed any affidavit denying his presence or disputing that mutation was carried out on 11th August, 1995 with his knowledge, but others viz. Mr. Subh Ram and his brothers were not

aware.

5. Moreover, the facts stated above reveal that Ms. Bharto was recorded as owner of the joint bhumidari land in 1966 after the death of her father Mr. Harphool Singh along with Mr. Subh Ram and Mr. Jai Karan. No objection or challenge to the same was ever made at any time, from 1966 onwards till she expired in 1986. Thereafter mutation was carried out in the name of the sons of Ms. Bharto with the knowledge of the appellants.

5A. Challenge for the first time was made only by filing of an application before the Tehsildar in May, 1998. In the said application, challenge was made to the order dated 11th August, 1995 by which mutation was done in the name of four sons of Ms. Bharto and no challenge was made to the mutation in the name of Ms. Bharto in 1966. Mutation made in the names of sons of Ms. Bharto, was merely a logical consequence and the same was necessary only to give effect to the mutation made in the name of Ms. Bharto in 1966. The appellants could not have asked for cancellation and setting aside of

mutation made in name of Ms. Bharto in 1966 by questioning mutation made in favour of her sons in the year 1995. It is apparent from the conduct of the parties that after the death of Mr. Harphool Singh, Ms. Bharto was recorded as one of his inheritors having equal right as her two brothers viz. Mr. Subh Ram and Mr. Jai Karan. She continued to enjoy full rights during her life time. After her death on 14th August, 1986, her sons as inheritors continued to enjoy the said rights with the consent and knowledge of the appellants as is apparent from the statement made by Mr. Devender Singh before mutation order dated 11th August, 1995 was passed by the Tehsildar. It is, therefore, clear that there was implied understanding between the aforesaid parties and the parties agreed and accepted Ms. Bharto and her legal heirs as joint bhumidars, who had inherited the property from Mr. Harphool Singh, after his death in 1964 resulting in mutation entry in 1966, which continued. What the appellants seek and had sought before the Tehsildar and the Financial Commissioner is to unsettle the accepted position, which had continued from 1964/1966

onwards till 1998. In view of the said position, Tehsildar and Financial Commissioner rejected the application of Mr. Subh Ram. It is also apparent that the said change in stand has taken place because part of the said bhumidari land, as stated in the impugned judgment, was acquired in 1997 by Award No. 17/97-98 under the Land Acquisition Act, 1894. Admittedly the appellants have already received their share of compensation for the said acquisition. The idea appears to be to grab the other part of the compensation which is going to the legal heirs of Ms. Bharto.

6. In view of the above, no ground for interference with the impugned judgment has been made out. The present appeal has no merit and is dismissed.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

OCTOBER 1 , 2007.
VKR/P